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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,635	08/22/2003	David N. Rucker	A-8281.C	8019

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EXAMINER	
VALENTI, ANDREA M	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/645,635	RUCKER ET AL.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-17,19 and 21-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☒ Claim(s) *13-17, 19, 21-32* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The indicated allowability of claims 13-17 and 19 is withdrawn in view of the reference(s) to U.S. Patent No. 6,694,916. Rejections based on the cited reference(s) follow.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-17 and 19 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,694,916. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach dispensing pet treats at a plurality of selected times durng a predetermined period, comprising: a container for holding a plurality of the pet treats; a time controlled dispenser for dispensing a plurality of the pet treats from said

container said time controlled dispenser including a microprocessor and an input device, said input device to signal said microprocessor to calculate a schedule for dispensing said pet treats, said microprocessor including a program to automatically calculate said schedule for dispensing the pet treats, said schedule constituting a first terminal interval, a second terminal interval, and at least one middle interval provided between said first and second terminal intervals, said schedule allowing the dispensing of at least one pet treat at the end of said first terminal interval and at least one pet treat at the beginning of said second terminal interval, wherein at least one of said terminal intervals is always less than the average time duration of all of said intervals..

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21 and 27 state "a pet treat will be dispensed in a majority of said equal intervals". It is not clear what applicant is intending to claim with this limitation. If the time is divided into equal segments, e.g. 6 hours is divided into 3 equal segments of two-hour intervals, how is a pet treat dispensed in a majority of the intervals? Examiner has interpreted this limitation for examination purposes as that if the prior art teaches that a pet treat is dispensed during each prescribed interval, thus it is dispensed for every interval and is thus dispensed in a majority of the intervals.

Claims 22-26 and 28-32 are rejected as being dependent from a rejected base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-23, 25-29, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2214329 to Lee.

Regarding Claims 21-23, 25, Lee teaches a device for dispensing a pre-selected plurality of pet treats at a corresponding predetermined plurality of dispensing times during a predetermined time period, comprising: a container for holding a plurality of pet treats (Lee fig. 3); a time-controlled dispenser for dispensing said predetermined plurality of pet treats; said time-controlled dispenser including a microprocessor (Lee Fig. 2 #1 and abstract) and an input device (Lee Fig. 1), said input device arranged to allow a user to enter said predetermined time period into said microprocessor, said microprocessor including a program(Lee page 5 line *for causing said time-controlled dispenser to dispense said predetermined plurality of pet treats at said respective predetermined plurality of dispensing times.* (Functional language The Examiner considers the claim language identified in italics above to be a functional limitation, i.e. intended use. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in

terms of structure rather than function alone. Since the structural limitations have been met by the prior art, the Examiner has reason to believe that the function limitation can be performed by the prior art structure. See MPEP 2114.)

Lee teaches the programmed dispensing can be changed or adjusted to meet different animal needs, but is silent on explicitly teaching said predetermined plurality of dispensing times occurring pseudo-randomly and being sufficiently spaced so that when said predetermined time period is divided into equal intervals, where the number of said equal intervals is equal to said predetermined plurality of dispensing times, a pet treat will be dispensed in a majority of said equal intervals; and whereby said treats will be dispensed pseudo-randomly but not too closely in time so as to maintain a pet's interest over said predetermined time period. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Lee at the time of the invention to meet the physiological needs of the animal which inherently may create a random pattern. Examiner re-iterates that the rewarding/feeding schedule is influenced by many parameters such as food size, size of the animal, the kind of animal, schedule suggested by the manufacturer, etc.

Regarding Claim 26, Lee as modified teaches an audio signal (Lee abstract last sentence).

Regarding Claims 27-29, 31, 32, Lee as modified teaches varying the time intervals, but is silent on explicitly teaching that the microprocessor calculates the dispensing schedule. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Lee at the time of the invention since

automating a previously manual procedure for the advantage of enabling a child to use it or to reduce the amount of time the input user has to spend setting up the device for an efficient use of time and does not present a patentably distinct limitation over the teachings of the cited prior art of record [*In re Venner*, 262 F.2d 91, 95, 120 USPQ 192, 194 (CCPA 1958)].

Claims 24 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2214329 to Lee in view of U.S. Patent No. 6,584,938 to Sherrill et al.

Regarding Claims 24 and 30, Lee as modified teaches feed which inherently could be played with by the animal as a toy, but is silent on explicitly teachings the type of feed i.e. the pet toys each contain a pet comestible. However, Sherrill teaches a pet feed/toy that contains a pet comestible (Sherrill #120). It would have been obvious for one of ordinary skill in the art to further modify the teachings of Lee with the teachings of Sherrill at the time of the invention for the advantage of satisfying a dogs need to chew as taught by Sherrill (Sherrill abstract).

Response to Arguments

Applicant's arguments with respect to claims 21-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andrea M. Valenti
Primary Examiner
Art Unit 3643

27 June 2006